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United States District Court  
Northern District of Illinois  
Eastern Division

**FILED**

JUN 25 2008 *aw*

6-25-2008

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

Darryl Moody petitioner

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Case No. 08CV 820  
(03CR318)

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United States of America,  
Respondent.

Judge Gottschall

Rebuttal Motion To Governments  
Opposition To a USC § 2255 Motion  
Seeking To Vacate, Set Aside or Correct  
Sentence.

Argument

Petitioner's motion raised two arguments in support of his claim that trial counsel was ineffective: (1) trial counsel fell below the acceptable standards of effective assistance; and (2) trial counsel had an actual conflict of interest and that such conflict adversely affected his loyalty and interest.

As was indicated by the government that petitioner's § 2255, was untimely, also in the alternative his ineffective assistance of counsel claims were without merit and the petition should be denied.

I. Equitable tolling should be granted to petitioner's untimely petition.

Equitable tolling excuses a untimely filing when the petitioner could not, despite the exercise of reasonable diligence have discovered all the information he needed in order to be able to file his motion on time. The use of the equitable tolling doctrine is granted sparingly only when extraordinary circumstances far beyond the petitioner's control, prevents a timely filing. In this case petitioner never received or reviewed his trial transcripts since the denial of his post conviction appeal. To ask petitioner to file a 2255 motion alleging ineffective assistance of counsel would in itself be an extraordinary undertaking. Surely the loss of petitioner's legal property by USP Coleman placed him in a very extraordinary and difficult position.

Petitioner did all he could to exercise due diligence, on March, 2007 he wrote USP Coleman's Captain Barah (See Attached), Counselor Danchize and the R # D officer Estrella seeking the assistance in obtaining

petitioner's legal property. Petitioner also sought help from FCI Memphis, Captain Wynder and Counselor Wright, after which he filed a Tort Claim and requested an extension of time to file § 2255. After he was denied said motion for extension of time Petitioner filed an untimely § 2255 motion without benefits of trial transcripts.

Surely the court is cognizant of the fact that this petitioner's **final** opportunity to bring Redress before the court and doing so pro-se without transcripts is an extraordinary undertaking within itself.

The circumstances surrounding petitioner's untimely motion are beyond his control and with due diligence he has made a sincere attempt to comply with the rules of the court. Petitioner ask the court to consider a evidentiary hearing if necessary regarding the issue of equitable tolling.

Because of prison officials misconduct and complete lack of concern, petitioner should be granted equitable tolling. Without trial transcripts it would be virtually impossible to provide evidence or to raise the claim of ineffective assistance of counsel. The fair administration of justice in this case along with judicial integrity warrants equitable tolling.

## II. Petitioner's Ineffective Assistance Claims Are Endowed With Merits According To Counsel's Ethical And Lawful Duty To Clients.

Petitioner respectfully disagrees with the government and states that as already set forth in his motion regarding ineffective assistance of counsel due to conflict of interest his claim is completely with merit. Anything short of an evidentiary hearing to determine such merits would be completely unjust.

Because of the said conflict, trial counsel's representation was adversely affected and rendered him ineffective. Petitioner has already stated in his motion and by way of affidavits how trial counsel's ineffectiveness rendered the rights secured by the 5th and 6th Amendment to the U.S. Constitution. If the government and trial counsel wish to refute the said claim and respond by way of an affidavit, it would be the proper response.

In the interest of fairness and since the claims made are extrinsic from the record, a hearing is necessary to resolve the conflict of Interest claim before the court.

Petitioner simply ask the court to grant such a hearing to determine the truth of the matter.

It is without doubt that petitioner's claim, can be

Substantiated and corroborated. In conclusion, petitioner prays that the court will grant a hearing to determine the merits of his ineffective assistance of counsel claim due to a conflict of Interest. It would not be possible to rule on this claim from the record because there are too many facts that exist outside of the record and the only way they can be refuted or proven is by a hearing.

Respectfully Submitted  
Darryl Moody /#

Daf Moody 6/18/08

USP Hazelton  
P.O. Box 2000  
Bruceston Mills, West Virginia

Certificate of Service

On the 13 day of June 2008 I cause this motion to be filed by way of U.S. Mail at USP Hazelton WV.

Daf Moody 6/18/08

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008 EXPIRES 5-31-05	
1. Submit To Appropriate Federal Agency: <b>Regional Counsel</b> <b>Regional Office</b> <b>3800 Camp Creek Parkway, SW</b> <b>Building 200</b> <b>ATLANTA, GA. 30331</b>		2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) <b>DARRYL MOODY #21174-424</b> <b>USP-HAZELTON POB 3000</b> <b>BRUXTON MILLS WV. 26525</b>		3. TIME (A.M. OR P.M.) <b>A.M.</b>	
3. TYPE OF EMPLOYMENT MILITARY CIVILIAN	4. DATE OF BIRTH <b>7/14/76</b>	5. MARITAL STATUS <b>NONE</b>	6. DATE AND DAY OF ACCIDENT <b>10/31/06</b>		
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) <b>I PLACED THE RECORD FILES OF MY CASE TRANSCRIPTS AND APPELLATE COURT'S AND DISTRICT COURTS RECORDS IN STORAGE. THE PRISON WAS LOCKED DOWN AND DURING WHICH I WAS TRANSFERRED FROM USP-CORREMAN 1 TO FCI MEMPHIS. THE RETRIEVAL EFFORTS OF MY LEGAL FILES AND RECORDS IN STORAGE IS LOST OR DESTROYED. IN EITHER EVENT I REQUIRE THESE LEGAL DOCUMENTS FOR PREPARATION OF PETITIONS AND TIME SENSITIVE LODGEMENTS (SEE ATTACHED)</b>					
9. PROPERTY DAMAGE NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED (See instructions on reverse side) <b>U.S. DISTRICT COURT CASE NO. 03CR317 ARRANGEMENT, PRETRIAL, AND SENTENCING RECORDS, TRANSCRIPTS, AND FILES. ALSO US CAZ CASE NO. 05-3927 APPELLATE COURT RECORDS, BRIEFS, AND FILES - ALL IN STORAGE.</b>					
10. PERSONAL INJURY/WRONGFUL DEATH STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT					
11. WITNESSES NAME ADDRESS (Number, street, city, State, and Zip Code)					
12. (See instructions on reverse) 12a. PROPERTY DAMAGE <b>\$500.00</b> 12b. PERSONAL INJURY 12c. WRONGFUL DEATH 12d. TOTAL (Failure to specify may cause forfeiture of your rights.) <b>\$500.00</b>					
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <b>Daryl Moody</b> CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)				13b. Phone number of signatory 14. DATE OF CLAIM <b>8-15-07</b> CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Imprisonment for not more than five years and shall be subject to a fine of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 18 U.S.C.A. 387.)	

# PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and contains the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. Principal Purpose: The information requested is to be used in evaluating claims.

C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

## INSTRUCTIONS

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item #12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch  
Civil Division  
U.S. Department of Justice  
Washington, DC 20530

and to the  
Office of Management and Budget  
Paperwork Reduction Project (1105-0002)  
Washington, DC 20503

## INSURANCE COVERAGE

In order that subrogation claims be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? Yes, if yes give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. **No**

16. Have you filed claim on your insurance either in this instance, and if so, is it full coverage or deductible?

**NO**

17. If deductible, state amount

**NONE N/A**

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? (It is necessary that you ascertain these facts)

**NO INSURANCE**

19. Do you carry public liability and property damage insurance? Yes, if yes, give name and address of insurance carrier (Number, street, city, State, and Zip Code) **No**

21 March 2007

Oscar Barat  
Correctional Captain  
United States Penitentiary-1  
P.O. Box 1033  
Coleman, FL 33521-1033

RE: DARRYL MOODY, REG NO 21174-424  
REQUEST COMPENSATION FOR LOST PERSONAL PROPERTY

Captain Barat:

On or about March 2006 in M-Unit, Unit Manager Carmona inspected my cell and noticed that I had stored legal transcripts and papers in a laundry bag -- secured underneath my bunk. Mr. Carmona ordered me to store my legal papers in my locker and I explained that I did not have enough room in my locker.

I requested space in M-Unit's Legal Room and Mr. Carmona informed that lockers in the Legal Room were unavailable and stated that my papers could be stored in the M-Unit Laundry Room and that I could retrieve my papers as necessary from him -- I agreed and removed my legal papers to the Laundry Room Storage.

In 2006 during an Institutional Lockdown my Security Level was changed from High to Medium and I was redesignated from USP-Coleman to FCI-Memphis, Tennessee. At that time I asked M-Unit's Case Manager Danchise to tell Mr. Carmona to retrieve my legal papers and transcripts from the Laundry Room Storage so that I could pack-out. Case Manager Danchise informed that Mr. Carmona no longer worked at USP-1 and that she, Ms Danchise, did not have a key to the Laundry Room Storage in M-Unit. The next day Ms. Estrada from R&D packed-me-out and I explained about my legal papers in Storage.

Ms. Estrada promised to get my property, legal papers and transcripts for me but failed to do so -- only some things from Education were retrieved by Ms. Estrada. I now find myself in need of my papers in order to seek post-conviction relief on my case and without my papers I will not be able to do so! I am unable to afford purchase of the transcripts from the Court Clerk and I respectfully request that you intervene on my behalf to retrieve my property and arrange compensation to the extent that I can purchase transcripts from the Court Reported -- approximately five hundred dollars (\$500.00). I do not have enough time to complete the Tort Claim Procedure because of time limits in the Court; and I thank you for your time and support in this matter, Captain Barat. Know that I look forward to hearing from you soon.

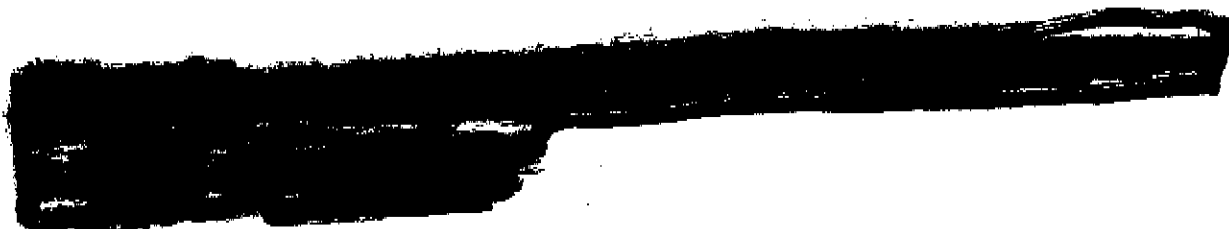


Letter to Captain Barat  
21 March 2007  
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Respectfully submitted,



Darryl Moody  
Reg No 21174-424  
Federal Correctional Institution  
Box 34550  
Memphis, TN 38184-0550



BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mr. Danchise / Care Manager	DATE: March 1, 2007
FROM: Doreen Mordun	REGISTER NO.: 2114 421
WORK ASSIGNMENT: Education Dept.	UNIT: Det 2-B Memphis Fed.

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

The request is concerning my legal documents. How can I get at USF-1 column. Mr. Corrado advise me to place my legal property in the utility storage room in the laundry room of M-100 at USF-1 column. Since we were in lockdown and I did not know the time of my transfer I was unable to retrieve my legal property. Since I've been here I've contacted your Dept. How can they help and it would you please check and see if it is there. This is in a white laundry bag.

Thank you in advance for your time and effort in this matter.

Sincerely,  
Doreen Mordun

(Do not write below this line)

DISPOSITION:

Signature Staff Member

Date

Record Copy - File; Copy - Inmate  
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86  
and BP-S148.070 APR 94



BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mr. Estrada / RTD	DATE: March 1, 2007
FROM: Darryl Moody	REGISTER NO.: 21171124
WORK ASSIGNMENT: Education Dept	UNIT: Delta B PC - Memphis

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

This letter is concerning my legal property. I am an inmate at WSP Coleman. I had a course issued to me to place my legal property in the storage room located in the inmate laundry room because it was too much to fit in my locker. WSP Coleman was a lock down during my destruction and transfer which made me lose retrieving my legal property. Would you please have them see if it is in there. It's in a white laundry bag.

Thank you in advance for your help and assistance in this matter.

Sincerely,

Darryl Moody

(Do not write below this line)

DISPOSITION:

Signature Staff Member	Date
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Record Copy - File; Copy - Inmate  
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86  
and BP-S148.070 APR 94



BP-S148.055 INMATE REQUEST TO STAFF CDPRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Captain Wynder	DATE: 4/10/07
FROM: Darryl Moody	REGISTER NO.: 21174-421
WORK ASSIGNMENT: Ed Dept/PCA	UNIT: Della B

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

This is a request concerning my legal property that I have been having difficulties getting from Coleman USPL. I was told by Captain Jack Marston, Prisoner of A.D. told me to place my legal documents in the locker behind my storage closet because I had a lot of transcripts and his legal lockers were available. During my re-designation and transfer to Infirmary USPL Coleman was on lockdown and Jack Marston was not working at USPL Coleman. Since then I've sent a request to LRP and my old case officer if I don't have what I need. My deadline for filing my 2255 is 10/22/07. I need have my transcripts to go through the Fair Hearing procedure. Please call Captain Greg Frost and ask him to search M-Unit's inventory and get for me transcripts. Please tell him I said ~~if~~ <sup>please</sup> if he can't find them ~~then~~ <sup>please</sup> reimburse me for half of these work (\$350.00) I will get the rest for my family. Thank you.

*Darryl Moody*

they cost approx \$300 ea (Do not write below this line)

DISPOSITION:

Signature Staff Member

Date

Record Copy - File; Copy - Inmate  
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86  
and BP-S148.070 APR 94

